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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:
USA COMMERCIAL MORTGAGE COMPANY,

Debtor.

In re:
USA CAPITAL REALTY ADVISORS, LLC,

Debtor.

In re:
USA CAPITAL DIVERSIFIED TRUST DEED
FUND, LLC,

Debtor.

In re:
USA CAPITAL FIRST TRUST DEED FUND, LLC,

Debtor.

In re:
USA SECURITIES, LLC,

Debtor.

Affects:
☐ All Debtors
☒ USA Commercial Mortgage Company
☐ USA Capital Realty Advisors, LLC
☒ USA Capital Diversified Trust Deed Fund, LLC
☐ USA Capital First Trust Deed Fund, LLC
☐ USA Securities, LLC

Case Nos.:
BK-S-06-10725-LBR
BK-S-06-10726-LBR
BK-S-06-10727-LBR
BK-S-06-10728-LBR
BK-S-06-10729-LBR

JOINTLY ADMINISTERED
Chapter 11 Cases Under
Case No. BK-S-06-10725-LBR

Judge Linda B. Riegler

Adv. No. 08-1133-lbr
Adv. No. 08-1134-lbr

**NOTICE OF MOTION FOR
APPROVAL OF SETTLEMENT
PURSUANT TO RULE 9019 OF
THE FEDERAL RULES OF
BANKRUPTCY PROCEDURE**

Hearing Date: December 2, 2009
Hearing Time: 9:30 a.m.

NOTICE IS HEREBY GIVEN that a Motion for Approval of Settlement Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Motion") related to Adv. No. 08-1133 and Adv. 08-1134 was filed on November 13, 2009 by the USACM Liquidating Trust (the "USACM Trust") and USA Capital Diversified Trust Deed Fund, LLC ("DTDF") [Dkt. No. 7770]. The Motion seeks entry of an order approving the proposed settlement between the

USACM Trust and DTDF, on the one hand, and Mary Petersen, individually and as Trustee of the Mary Petersen Family Trust DTD 8/12/98 ("Mary Petersen"), Michael Petersen, individually and as Trustee of the Michael D. Petersen Family Trust DTD 8/12/98 ("Michael Petersen"), Kathryn L. Petersen, individually and as Trustee of the Kathryn L. Petersen Living Trust and as Trustee of the KLP Trust DTD 7/15/99 ("Kathryn Petersen"), Specialized Development Tahoe, LLC, and Specialized Development, LLC ("Specialized Development" and collectively with Mary Petersen, Michael Petersen, and Kathryn Petersen, the "Defendants"), on the other hand.

Following extensive arms-length negotiations, the USACM Trust, DTDF, and the Defendants (collectively, the "Parties") reached an agreement to resolve the matters at issue in Adversary Proceeding No. 08-1133 and Adversary Proceeding No. 08-1134, subject to this Court's approval under Federal Rule of Bankruptcy Procedure 9019. The material terms of the proposed settlement agreement are summarized below:¹

- a. **Settlement Payment.** The Defendants will pay a confidential sum (the "Settlement Payment") to the USACM Trust to settle all claims available to the USACM Trust and DTDF against the Defendants. DTDF will share in the settlement as a beneficiary of the USACM Trust and as otherwise outlined in the agreement between the USACM Trust and DTDF filed with the Court on March 13, 2008.
- b. **Bankruptcy Court Approval.** The proposed settlement agreement is contingent upon this Court's approval of the settlement under Rule 9019 of the Federal Rules of Bankruptcy Procedure.
- c. **Mutual Release.** Upon the Court's approval of the settlement and the irrevocable receipt of the Settlement Payment by the USACM Trust, the Parties will exchange full mutual releases as to all claims that they ever had, now have, or may at any future time have against each other.
- d. **Confidentiality.** The Parties will keep the terms of the proposed settlement agreement confidential and avoid disclosing such terms to third parties subject to several limited exceptions, including any party-in-interest who has executed and returned the confidentiality agreement in connection with the Motion.

¹ The information above is only a summary of the terms of the proposed settlement agreement, and is not intended to amend or modify the actual terms of the written settlement agreement, the terms of which shall control in the event of any conflicts.

1 **NOTICE IS FURTHER GIVEN** that if you do not want the Court to grant the relief
2 sought in the Motion, or if you want the Court to consider your views on the Motion, then you
3 must file an opposition with the Court, and serve a copy on the person making the Motion ***no***
4 ***later than 15 days*** after the date of this Notice. If the hearing date has been set on less than 15
5 days' notice, then the opposition must be filed and served ***no later than 5 business days*** before
6 the hearing. The opposition must state your position, set forth all relevant facts and legal
7 authority, and be supported by affidavits or declarations that conform to Local Rule 9014(c).

8 If you object to the relief requested in the Motion, you ***must*** file a **WRITTEN** response
9 to the Motion with the Court. You ***must*** also serve your written response on the person who sent
10 you this notice.

11 If you do not file a written response with the Court, or if you do not serve your written
12 response on the person who sent you this notice, then:

- 13 • The Court may *refuse to allow you to speak* at the scheduled hearing; and
- 14 • The Court may *rule against you* without formally calling the matter at the hearing.

15 **NOTICE IS FURTHER GIVEN** that the hearing on the said Motion will be held before
16 the Honorable Linda B. Riegle, United States Bankruptcy Judge, in the Foley Federal Building,
17 300 Las Vegas Boulevard South, Third Floor, Bankruptcy Courtroom No. 1, Las Vegas, Nevada
18 89101 on **Wednesday, December 2, 2009 at 9:30 a.m.**

1 DATED: November 13, 2009.

2 **DIAMOND MCCARTHY LLP**

3 By: /s/ Eric D. Madden
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Counsel for USACM Liquidating Trust

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of November 2009, I caused to be served a true and correct copy of the foregoing **NOTICE OF MOTION FOR APPROVAL OF SETTLEMENT PURSUANT TO RULE 9019 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE** by electronic transmission to the USACM Post-Confirmation Service List Dated March 31, 2009, and by electronic transmission and United States Mail to counsel for the Defendants, Tim O'Reilly, O'Reilly Law Group, LLC, 325 South Maryland Parkway, Las Vegas, NV 89101-5300, tor@oreillylawgroup.com, and Steven J. Katzman, Beinert, Miller, Weitzel & Katzman, P.C., 115 Avenida Miramar, San Clemente, California 92672, skatzman@bmwklaw.com.

/s/ Catherine A. Burrow
Catherine A. Burrow
Senior Paralegal
Diamond McCarthy LLP